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Supreme Court, U.S.
FILED
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CLERK

CASE NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

JOSEPH ADAMICK, JANINE ADAMICK, APRIL C. ADAMICK, THE ESTATE OF KATHLEEN JO PRICE Deceased, by its Administratrix, JANINE ADAMICK, and JANICE M. HAYES,

Petitioners,

vs.

DONALD HODEL, Secretary of the Department of the Interior, UNITED STATES DEPARTMENT OF THE INTERIOR, UNITED STATES BUREAU OF LAND MANAGEMENT, ("BLM"), EDWARD SPANG, Nevada State Director of the Bureau of Land Management, ROBERT F. BURFORD, Director of the Bureau of Land Management,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT WITH SUGGESTION FOR REMAND PURSUANT TO 28 U.S.C.§2106 FOR WANT OF A FINAL ORDER PURSUANT TO 28 U.S.C. §1291

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January 31, 1986

QUESTIONS PRESENTED

1. Whether the Court of Appeals improvidently heard the appeal brought by petitioners herein and erred in denying their motion to remand for want of a final Order, in that defendants, respondents herein, did not obtain summary, or any, judgment on all issues raised in the Complaint, and the denial of plaintiffs' motions for partial summary judgment and for a preliminary injunction did not constitute final orders?

2. Whether the Court of Appeals erred in ruling that the defendants had complied with the Order in Interior Freedom of Information Act Appeal No. 81-8 that defendants copy all pages of every Desert Land Act application filed in Nevada inasmuch as defendants' motion for summary judgment did not raise this issue and the only motion on this issue was plaintiffs' motion for partial summary judgment, which was denied?

3. Whether 43 U.S.C. 2450.6, which

authorizes a minor official of the Interior Department to revoke a final land classification decision of the Secretary of the Interior, without hearing or public notice, is unconstitutional on its face and as applied to petitioners in that it is violative of Art. 4, Sec. 3, Cl. 2 of the United States Constitution and legislation enacted in support of that provision?

4. Whether the Secretary of the Interior is required to make and publish his interpretation of whether 43 U.S.C. 2521.2(d) requires that applicants for public land in Nevada under the Desert Land Act must prove they have a source of water prior to granting of a grant of entry and whether Public Law No. 89-292 authorizes use of water from the Southern Nevada Water Project to support a Desert Land Act acquisition?

5. Whether BLM had classified the land on which petitioners applied as suitable for Desert Land Act entry and acquisition when it made a decision on the merits of their

applications, and is estopped, pursuant to 43 U.S.C. §2450.2, which requires that the land be classified as suitable before any other action is taken, from reclassifying the land as unsuitable?

6. Whether the district court should grant petitioners' complaint for mandamus to compel defendants to properly administer the Land Act application program in Nevada?

7. Whether the Court of Appeals erred in denying attorney's fees to petitioners, in that petitioners had prevailed on a FOIA appeal, defendants failed to comply with the FOIA Order and petitioners brought an action to compel agency action unreasonably delayed?

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CASE NO. _____

SUPREME COURT OF THE UNITED STATES
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JOSEPH ADAMICK, et al.,

Petitioners,

vs.

DONALD HODEL, Secretary of the Department of the Interior, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT WITH SUGGESTION FOR REMAND PURSUANT TO 28 U.S.C. §2106 FOR WANT OF A FINAL ORDER UNDER 28 U.S.C. §1291

The petitioners respectfully pray that a writ of certiorari issue to review the Memorandum Order of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on October 2, 1985.

OPINIONS BELOW

The Order of the United States District Court for the District of Nevada in Case No. CV-LV-81-586, RDF, granting the defendants'

motion for summary judgment on some points was not reported. The unpublished Memorandum Order of the United States Court of Appeals for the Ninth Circuit in Case 1894, Joseph Adamick, et al. v. Donald Hodel, et al. is at p. 1a of the Appendix in a separate volume.

The order of the district court denying plaintiffs' (petitioners herein) motion for partial summary judgment and specific performance is at p. 19a, and other orders appear at 21a and 25a.

JURISDICTION OF THIS COURT

The unpublished Memorandum of the United States Court of Appeals for the Ninth Circuit affirming the district court and declining to rule on some issues was entered on October 2, 1985, p. 1a.

No petition for rehearing was filed.

Mr. Justice Rehnquist granted an extension of time until January 31, 1986 in which to file a petition for a writ of

certiorari.

As set forth in the first question presented, petitioners contend that they took an appeal in order to preserve their rights in the event the Court of Appeals later determined that the Orders of the District Court comprised a final judgment.

Petitioners' first question asks this Court to determine that the Court of Appeals erred in not remanding this action, Order at p. 18a, and to vacate the Order of the Court of Appeals in that it improvidently heard the appeal.

The jurisdiction of this court arises, if at all, under 28 U.S.C. §1254(1), and the authority to vacate the Order of the lower court and to remand the case arises under 28 U.S.C. §2016.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The constitutional provisions, federal regulations and statutes involved are the

Desert Land Act, 43 U.S.C. §321, et seq., at p. 34a of the separate Appendix, Art. 4, Cl 2 of the United States Constitution, the First and Fifth Amendments to the United States Constitution, 43 C.F.R. 2450.2, at p. 38a, 43 C.F.R. §2450.6, at 39a, 43 C.F.R. 2521.2(d), at 41a, 28 U.S.C. §1361, 28 U.S.C. §1291, and statutes pertaining to attorney's fees, 28 U.S.C. §2678, 28 U.S.C. 2412(d) and 5 U.S.C. (a)(4)(e).

Article 4, Sec. 3, Cl.2 of the United States Constitution:

> Control of the Property and Territory of the Union.
>
> 2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular state.

STATEMENT OF THE CASE

This case concerns the administration of the Desert Land Act; p. 34a, program in Nevada, the failure of the defendants to comply with Interior Freedom Of Information Act (FCIA) Orders in FOIA Appeal No. 81-8, App. p. 15a, favorable to the petitioners, defendants' refusal to interpret and evenly apply 43 C.F.R. 2521.2(d), at p. 41a, the constitutionality and validity of 43 C.F.R. §2540.6, p. 39 , which permits an "authorized official of the Department of the Interior to overturn a land classification decision of the Secretary without hearing or public notice and in derogation of Art. 4, §3, Cl. 2 of the United States Constitution.

Prior to 1964, private acquisition of federally owned land in Nevada was permitted in Nevada under various federal statutes, including the Desert Land Act.

On June 4, 1964, then Secretary of the Interior Stewart Udall imposed a moratorium on filing of Desert Land Act Entry ("DLE")

application in Nevada, Revision of Application Procedures for Public Lands, 43 Fed. Reg. 7294(1964).

On April 25, 1978, the State of Nevada filed a Complaint for Mandamus, Injunctive and Declaratory Relief in the United States District Court, seeking, inter alia, the lifting of the moratorium and alleging that there was plenty of water to support DLE application in Nevada, Case No. Civ-R-78-77, 699 F. 2d 486.

On December 14, 1978, then Acting Assistant Secretary of the Interior Wicks rescinded the moratorium Order, 43 Fed. Reg. 59555 (1978).

The Order provided that the Nevada Bureau of Land Management ("BLM") would commence accepting DLE application on January 1, 1979.

The BLM subsequently selected approxmately 8 million acres of the 49 million available as suitable for DLE entry and distributed maps noting the location of said

8 million acres.

Petitioners, plaintiffs and appellants in the lower courts, filed applications and acquired priority filing rights.

43 C,F.R. 2540.2 provides that BLM must first determine whether an application is properly filled out and then must classify the land, prior to making any decisions on the individual merits of an application.

There all three types of decision made by BLM:

1. A land classification decision which is applicable regardless of who applies for the land. This decision can not be appealed to the Board of Land Appeals.

2. A decision regarding the merits of an application. Such a decision may be appealed to the Board of Land Appeals.

3. A decision regarding water source which BLM alleged was not appealable either to the Board or Secretary.

The BLM State Director rejected petitioners' application in May, 1980 based on unsuitablity of the crop, the jojoba bean.

Petitioners appealed to the IBLA which by Order dated August 20, 1980, App. P. 9a, set aside BLM's determinations and remanded the cases.

The IBLA did not retain jurisdiction on remand.

As BLM failed to supply any information requested, petitioners filed an appeal under the Freedom on Information Act, 5 U.S.C. §552.

The Interior Acting Associate Solicitor remanded the FOIA appeal, No. 81-8, to BLM by Order dated March 12, 1981, and stated that BLM might invoke FOIA exemptions 4, 6 and 9, which BLM failed to do.

By further Order dated March 25, 1981, p. 15a, the Interior FOIA Officer granted petitioners access to every page of every DLE application filed in Nevada and provided that BLM must copy them at 5¢ per page.

By September 15, 1981, BLM had not complied with the IBLA Order and had not fully complied with the FOIA Order.

Petitioners filed the instant action.

The Complaint is at p. 42a; the prayer

is at p. 63a.

In their Complaint and in a Motion for Preliminary Injunction, which was denied, Petitioners sought to enjoin the defendants, inter alia, from reclassifying the land on which they applied in any way adverse to petitioners.

Notwithstanding, BLM entered new decisions incorrectly labeled as "land classifications," alleging that the land was unsuitable.

Petitioners timely appealed to the Secretary, who failed to exercise his discretion to overturn the Order, which therefore became the final Order, by operation of law, pursuant to 43 C.F.R. 2450.6, at p. 39a.

Petitioners, as a precaution, filed a Petition For Review of the Order reclassifying the land in a separate action, Case No. 83-7599, Adamick, et al. v. Department of the Interior, a direct appeal to the Court of Appeals from agency action.

Petitioners filed a notice in the

district court advising it regarding said related action and that the land reclassification issue would be litigated in the district court if the Court of Appeals lacked jurisdiction.

Petitioners also moved the Court of Appeals to transfrer the related action to the district court, pursuant to 28 U.S.C. §2347 (b)(1)(3) for consolidation and filed a copy of the motion in the district court, on December 20, 1983.

On December 20, 1983, the Court of Appeals granted respondents' motion to dismiss for want of jurisdiction, App. p. 29a, and by Order of January 24, 1984, simultaneously denied petitioners' motion for an extension of time to file a Petition for Rehearing and the Petition for Rehearing and directed that the mandate issue forthwith, p. 30a, in related Case No. 83-7599.

The district court had denied plaintiffs' motion for a continuance and for partial summary judgment on the FOIA issue on

January 16, 1984, p. 26a, and on January 17, 1984, granted BLM's motion for summary judgment.

Petitioners improvidently appealed, and the Court of Appeals denied their motion to remand the instant action for want of a final Order, p. 18.

The Court of Appeals affirmed in an unpublished Memorandum, p. 1a, erring in several findings and declining to rule on issues raised in the Complaint.

REASONS WHY A WRIT OF CERTIORARI SHOULD BE GRANTED IF THIS COURT DOES NOT REMAND THE ACTION

This petition presents several of the reasons delineated in Rule 17 of the Rules of the Supreme Court as bases for consideration of a review on writ of certiorari. if this court declines to remand the action to the Court of Appeals.

1. There are important questions of federal law which should be settled by this Court. The questions were not addressed by

either lower court.

These questions affect many persons. More than 4000 persons filed DLE applications in Nevada alone in two years.

Many of these applications were improperly rejected by BLM prior to BLM's making a land classification decision, in contravention of 43 U.S.C. 2450.2.

BLM has arbitrarily and inconsistently applied 43 C.F.R. 2521.2(d), pertaining to whether applicants for land in Nevada under the Desert Land Act must supply proof of a water source prior to a grant of entry, and denied many applications while not requireing some applicants to make such proof.

The Secretary has refused to make and publish his interpretation of this regulation, and BLM has evaded review by the Board of Land Appeals by rejecting applications but stating that said rejection is a non-appealable final Order.

The Secretary has additionally declined to interpret whether Public Law No. 89-292

authorizes use of water from the Southern Nevada Water Project to support a Desert Land Act entry.

43 C.F.R. 2540.6, p. 39a, which provides that a minor official may overturn a land classifiction decision of the Secretary of the Interior, without hearing or public notice, is violative of Art. 4, Sec. 3, Cl. 2 of the Constitution, .

The public lands belong to all the citizens of the United States and all are entitled to an equal opportunity to acquire public land.

This regulation permits a minor official to arbitrarily overturn a land classification decision at any time prior to a grant of a patent. Such a situation leads to uncertainty and deprives applicants of their property rights. when their land is reclassified.

2. The Court of Appeals decided a federal issue in conflict with applicable decisions of this Court when it found that petitioners were not entitled to attorney's

fees under the Freedom of Information Act, pursuant to 5 U.S.C. §552(A)(4)(e).

Petitioners prevailed on appeal of BLM's denial of their requests, and the Interior Freedom of Information Officer ruled that BLM must copy every page of every DLE application filed in Nevada and send this information to petitioners. See Order, p. 15a.

BLM failed to do so. The very purpose of the Freedom of Information Act and the salutory reasons underlying . (A)(4)(e) would be negated if successful requesters are not able to obtain attorney's fees when they are compelled to file actions to compel compliance with FOIA Orders.

This court has consistently found that persons similarly situated who have prevailed are entitled to fees incurred in enforcing a FOIA Order.

THIS COURT SHOULD VACATE THE ORDER OF THE COURT OF APPEALS AND REMAND THIS ACTION AS THERE IS NO FINAL ORDER OF THE DISTRICT COURT

Petitioners concede that their appeal was improvidently taken to and heard by the Court of Appeals as there was no final Order pursuant to 28 U.S.C. 1291 and Federal Rule of Civil Procedure 54(b).

Petitioners took the appeal to preserve their rights in the event that Court of Ap- might later decide there had been a final order which should have been appealed.

That is exactly the decision reached by the Court of Appeals, which denied petitioners' motion to remand the action. See Order, p. 18a.

The district court did not rule on several issues raised in the Complaint, which is at p. 42a, nor did defendants move for summary judgment on the following issues:

1. Defendants had classified the land applied for as suitable for entry under the Desert Land Act, as they had made a decision

on the merits--whether the jojoba bean is a suitable crop, p. 49a. 43 C.F.R. 2450.2 provides that BLM must (1) make a land classification decision before any decision on the merits is made.

2. That defendants acted improperly in "rejecting" plaintiffs' applications for alleged failure to show proof of a water supply but stating the "decision" was not an appealable Order, thus foreclosing petitioners' right of review. See p. 53a. he IBLA advised petitioners that IBLA would not act unless and until an adverse decision was entered.

3. The Secretary failed to interpret 43 C.F.R. 2521.2(d). BLM did not require other applicants to provide proof of a water supply, p. 54a.

4. Plaintiffs alleged that BLM had preselected successful applicants, p. 58a, and that BLM had BLM had no intent of granting entry to other than a preselected group, in contravention of its promise in State of

Nevada, ex rel. Nevada State Board of Agriculture, 699 Fed. 2d 486, that it would process and fairly consider DLE applications in Nevada in accordance with applicable law.

5. Defendants failed to state whether P.L. 89-292 authorizes use of the water from the Southern Nevada Water Project which provides water from the Colorado, a navigable river, to support a DLE entry, under 43 U.S.C. 321, et seq., and whether BLM had allowed other applicants to use said water, p. 59a and 60a.

6. Plaintiffs' motion to enjoin BLM from reclassifying the land on which they had applied, in any manner which would foreclose their rights of entry, which was filed with the Complaint and made a part thereof, p. 64a.

The district court's denial of the motion for a preliminary injunction did not serve as a final order on the issues. The court merely determined that an injunction was not necessary at that time.

It is well settled law that a final

judgment is one which disposes of all claims raised in the Complaint or tried by consent.

Petitioners have listed six issues which were not adjudicated.

Federal Rule of Civil Procedure 54(b) provides that no appeal may be taken unless all claims as to all parties are adjudicated.

There was no 54(b) certificate.

A case must be "in" the Court of Appeals for purposes of 28 U.S.C. §1254, which authorizes the Supreme Court's review of "cases in" the Courts of appeals. Nixon v. Fitzgerald, 102 S. Ct. 2690.

Appeal will lie only from a final order which ends all litigation on the merits, Catlin v. U.S., 324 U.S. 229, 65 S. Ct. 631, (1945).

The case does not involve a unsettled question of sufficient urgency to fall within the "collateral order" doctrine of Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 641, 69 S. Ct. 1221.

There was no certificate under 28 U.S.C.

1292(b).

In addition, the district court did not rule on plaintiffs' claims brought under the First and Fifth Amendments and that BLM deprived them of property interests by refusing to process their applications.

The Court Of Appeals Erred In Finding That The Classification Issue Was Not Before The District Court

Petitioners have shown that their Complaint and accompanying Motion For Preliminary Injunction sought injunctive relief to prevent defendants from reclassifying the subject land, that they filed notices in the district court pertaining to objections to the decisions, defendants' failure to transmit case files and materials to the Secretary and the filing of the direct appeal in the Court of Appeals and of their Request that the Court of Appeals transfer their direct appeal to the district court. See pp. 13 and 14, supra, Statement of the Case.

The district court had full knowledge

Director could not constitutionally reclassify the subject lands.

If The Issue Was Not Properly Raised Petitioners Should Be Permitted To Amend Their Complaint, If Necessary

If this Court remands this action, petitioners should be permitted to amend their Complaint, pursuant to Fed. R. of Civ. P. 15.

They did not have an opportunity to do so as the district court granted defendants' motion for summary judgment on January 17, 1984 and denied plaintiffs' motion for a continuance on January 16, 1984, p. 26(a), shortly after the Court of Appeals had dismissed the related action, Case No. 83-7599, p. 29a. See pp. 12 and 13, supra.

The Court Of Appeals Erred In Not Considering The Related Action.

The Court of Appeals declined to consider Case No. 83-7599, a direct appeal from agency Orders reclassifying the subject lands.

Said Case was relevant to prove that

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petitioners raised the classification decision issue in the district court and intended to litigate it there if the Court of Appeals dismissed for want of jurisdiction.

Respondents Acknowledge That Petitioners' Applications Are Still Pending

The Court of Appeals erred in stating that petitioners had no applications to assign. In a letter dated October 14, 1983, the Assistant Secretary of Land and Water Resources assured petitioners that their priority filing rights would not be extinguished as long a litigation if before the federal court, p. 31a.

The government stated in a memorandum in support of motion to dismiss for want of jurisdiction in related Case 83-7599 that, "petitioners' applications are still before the Nevada BLM Director," p. 32a.

Unless this court vacates the Order of the Court of Appeals Order that all claims had been litigated and resolved against the petitioners, they can not pursue litigation

on the unresolved claims presented in their Complaint.

THE COURT OF APPEALS ERRED IN RULING THAT DEFENDANTS HAD COMPLIED WITH FOIA APPEAL ORDER 81-8

The Court of Appeals erroneously assumed that defendants' motion for summary judgment concerned the FOIA Order, which is at p. 15a.

In fact, defendants alleged only they had complied with the Magistrate's discovery Order, p. 21a. Defendants could comply with said Order without complying with the FOIA Order. The petitioners already had the rights mentioned. The Magistrate's Order could not and did not modity the FOIA Order, as defendants had not requested any modification.

The serial pages are available to the general public, and in addition, are part of the DLE application. See p. 16a. Petitioners already had the right to have BLM copy said pages. Petitioners did not request that BLM transport case files to Reno,

nor agree that defendants' offer to do so satisfied their obligation under the FOIA Order.

Defendants' motion for summary judgment was not supported by Affidavits.

The Declaration of William Stowers, p. 28a, was submitted by defendants in opposition to plaintiffs' motion for partial summary judgment. See p. 27a.

The Declaration on its face admitted that defendant had supplied only 2305 first pages of DLE applications, whereas the FOIA Order stated there were 2800 active DLE applications, p. 15a.

Petitioners' motion and facts were thus uncontroverted, and petitioners were entitled to summary judgment as a matter of law.

The denial of petitioners' motion can not operate as an adjudication of the issue.

The Court of Appeals' erroneously assumed that the district court granted summary judgment to defendants on the FOIA

claims and that petitioners had an obligation to refute contentions never raised in defendants' motions.

Petitioners pray that this Honorable Court remand this action so that they can obtain enforcement of the FOIA Order.

43 U.S.C. 2450.6 IS UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED.

Art. 4, Sec. 3, Cl. 2 vests the authority to dispose of public land in the Congress. Congress delegated its grant of authority to the Secretary of the Interior.

This issue was not litigated in the district court.

Defendants failed to cite any authorityity to support this regulation.

By failing to comply with 43 U.S.C. 2450.2 which requires that BLM classify all applied-for lands and the BLM Manual, BLM has evaded the requirement for public hearing, which would apply if the classification pertains to more than 2500 acres.

The application of 43 C.F.R. 2450.6 de-

petitioners' right to due process and to meaningfully contest the reclassification.

The Secretary of the Interior holds the public lands in trust and stands in a special relationship to the public, Saulque v. U.S.A.,et al., 663 F. 2d. 968.

DEFENDANTS ARBITRARILY AND UNEVENLY APPLIED 43 U.S.C. §2521.2(d)

The secretary failed and refused to disclose his interpretation of 43 U.S.C. 2521. 2(d). BLM arbitrarily processed applications which contained no proof of a water soruce, while demanding that petitioners produce said evidence. Under 5 U.S.C. 552, the Secretary is required to publish his interpretations of a regulation, Morton v. Ruiz, 415 U.S. 199, 94 S. Ct. 1055 (1974).

Respondents also failed to interpret whether DLE applicants can use water from the Colorado River under P.L. 82-292, notwithstanding that the Colorado River may be excluded as a source of water under the Act,

being a navigable stream. See p. 35a, 43 U.S.C. §321.

Petitioners demonstrated they had made applications to the Las Vegas Valley Water District, which administered the Colorado River project, for water.

By failing to comply with FOIA Order and withholding approximately 500 applications from petitioners, BLM prevented them from discovering whether any applicants intended to rely on Colorado River water.

Petitioners raised this issue in their Complaint, but it was not adjudicated.

RESPONDENTS HAD CLASSIFIED THE SUBJECT LAND AS SUITABLE FOR DLE ENTRY

BLM disregarded its own regulations by making a decision on the merits--that jojoba was not a qualifying crop--before it classified the subject land. 43 U.S.C. §2450.2 requires that the land be classified before the merits of an individual application are considered.

Petitioners filed their applications in 1979. BLM did not make its alleged classification until more than four years later, although the BLM Manual requires that it classify the land within 60 days, Faulkner v. Watt, 661 F. 2d 809, (1981).

Petitioners reasonably believed that inasmuch as BLM made a decision on the merits, the land was suitable. BLM did not make any allegation in the jojoba decision or in its unappealable water decisions that the land was unsuitable.

Estoppel may be applied against the government, even when it acts in its sovereign capacity, United States v. Wharton, 514 F. 2d 406 410 (9th Cir. 1975), Lazay FC Ranch, 481 F. 2d985, 989 (9th Cir. 1973).

PETITIONERS ARE ENTITLED TO A WRIT OF MANDAMUS

Petitioners noted many violations of the public land laws. BLM permitted applicants to apply for small, non-contiguous parcels of landand to apply as agents for other

persons or corporations and to assign applications to non-eligible entities.

Petitioners had a right to expect that government attorneys would disqualify themselves voluntarily if they or family members had filed DLE applications, inasmuch as all applicants were in competition for available water supplies.

A former U.S. Attorney, Mahlon Brown, listed the Post Office Box number for the U.S. Attorney's Office as his address and permitted other persons to also do so, in contravention of 43 U.S.C. 2521.2(b), which provides that applicants must state their place of actual residence and their post-office addresses.

A Assistant U.S. Attorney acted properly in disqualifying himself as he had made a DLE application.

Petitioners found that a U.S. Congrssmen, state Senators, public officials and judges were among the applicants.

BLM failed to supply 500 applications. Petitioners were entitled to know whether government attorneys were among that group.

It is reasonable to assume that these 500 applications were withheld to conceal the identities of some applicants.

PETITIONERS ARE ENTITLED TO ATTORNEY'S FEFS UNDER U.S.C. §552(a)(4)(e).

Petitioners completely prevailed on their FOIA Appeal and inasmuch as they were compelled to file the instant action to obtain records, they are entitled to compensation under U.S.C. §552(a)(4)(e), as well as 28 U.S.C. 2678 and 28 U.S.C. §2412(d).

CONCLUSION

This Honorable Court should vacate the Order of the Court of Appeals for the Ninth Circuit, in that it lacked jurisdiction to hear the appeal pursuant to 28 U.S.C. §1291 as the district court did not adjudicate all claims.

Petitioners ask the Court to remand this action to allow petitioners to pursue their

unlitigated claims in the district court.

If the court is not so disposed, petitioners pray that the court will grant a writ of certiorari on the issues presented.

Respectfully submitted,

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85-1318

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JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

JOSEPH ADAMICK, et al.,

Petitioners,

vs.

DONALD HODEL, Secretary of the Department of the Interior, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT WITH SUGGESTION FOR REMAND PURSUANT TO 28 U.S.C. 2106 FOR WANT OF A FINAL ORDER PURSUANT TO 28 U.S.C. s.1291

APPENDIX TO PETITION

JANICE M. HAYES, ESQ.
3391 S. El Camino Road
Las Vegas, Nevada 89102
Attorney for Petitioners
Telephone: (702) 871-5135

January 31, 1986

APPENDIX TO PETITION FOR CERTIORARI

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FILED
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CLERK, U.S.
COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH ADAMICK, JANINE ADAMICK, Individually and as Administratrix of the ESTATE OF KATHLEEN JO PRICE, Deceased, APRIL ADAMICK and JANICE HAYES,	
Plaintiffs-Appellants,	No. 84-1894
v.	D.C. No. CV 81-586 RDF
DONALD HODEL, Secretary of the Department of the Interior, UNITED STATES DEPARTMENT OF THE INTERIOR, UNITED STATES BUREAU OF LAND MANAGEMENT, ROBERT BURFORD, Director of the Bureau of Land Management, EDWARD F. SPANG, Nevada State Director of the Bureau of Land Management,	MEMORANDUM*
Defendants-Appellees.	

Appeal from the United States District Court for the District of Nevada
Honorable Roger D. Foley, District Judge, Presiding

Argued and Submitted May 16, 1985-
San Francisco, California

Before: POOLE and NELSON, Circuit Judges,
and CURTIS, District Judge**

Appellants sued various federal officials and agencies (the government) in connection with their applications to obtain

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

** The Honorable Jesse W. Curtis, Senior United States District Judge for the Central District of California, sitting by designation.

permits for entry onto desert lands under the Desert Land Act, 43 U.S.C. §§ 321-39 (1982). The district court denied appellants' motion for summary judgment, granted summary judgment for the government, and denied both appellants' motion to alter or amend judgment under Fed. R. Civ. P. 59 (e), and their request to file an amended complaint. We affirm.

A motions panel of this court rejected appellants' argument that jurisdiction was lacking over their appeal because the district court did not enter a final appealable order. In granting summary judgment for the government, the district judge ruled upon all of the claims asserted in appellants' complaint. Additionally, appellants' arguments to us concerning the Bureau of Land Management's determination that the subject land was unsuitable for entry were not properly before the district court. The classification decision occurred

after appellants filed their complaint. Appellants did not seek leave to amend their complaint until after summary judgment against them was entered. They did not make a motion to amend, but requested leave to amend in their motion to alter or amend the district court's judgment. The district judge did not abuse his discretion by denying appellants leave to amend their complaint at that time. See Dan Caputo Co. v. Russian River County Sanitation District, 749 F. 2d 571, 574 (9th Cir. 1984).

Since a challenge to the Bureau of Land Management's land classification decision was not part of appellants' complaint, it was not properly before the district court. While appellants raise this issue on appeal, we do not generally consider an issue for the first time on appeal absent exceptional circumstances. Taylor v. Sentry Life Insurance Co., 729 F.2d 652, 655 (9th Cir. 1984). Appellants have failed to

demonstrate exceptional circumstances.

The district court granted the government summary judgment on appellants' claims under the Freedom of Information Act, 5 U.S.C. § 552 (1982). We review de novo, Loehr v. Ventura County Community College District, 743 F.2d 1310, 1313 (9th Cir. 1984), and affirm. In response to the Bureau of Land Management's showing by affidavits that it complied with appellants' request for information, appellants failed to present countervailing evidence or affidavits to support their position that they were entitled to additional materials. Entry of summary judgment against appellants was therefore appropriate. Fed. R. Civ. P. 56(e); see Coca—Cola Co. v. Overland, Inc., 692 F.2d 1250, 1254 (9th Cir 1982).

Summary judgment was also proper on the issue whether appellants' Desert Land Entry applications and their associated preference rights are assignable. Appellants based

this claim upon a letter they received from an Associate Solicitor of the Department of the Interior which stated that the Department would not recognize such assignments. They did not have, and do not currently have, any applications to assign; their applications, moreover, were rejected by the Bureau of Land Management. There were no allegations in the complaint that appellants assigned any applications, or that they sought and were denied recognition in a final decision by the Interior Department. Thus, appellants have not presented an actual "case or controversy" for purposes of Article III of the Constitution--since they did not allege a distinct and palpable injury fairly traceable to the government's actions, they lack standing to assert this claim. See Allen .v. Wright, 104 S.Ct. 3315, 3325 (1984).

The remaining issues raised by appellants also lack merit. The district court did not abuse its discretion in regulating discovery. See Rae v. Union Bank, 725 F.2d 478, 481 (9th Cir. 1984). Moreover, appellants never moved in district court to compel appellees, their counsel, and a magistrate to answer questions concerning possible conflicts of interest. Nor did they move to disqualify any of these individuals.

Insofar as appellants' request that this court "mandate that Defendants-Appellees investigate alleged irregularities in administration of the Desert Land Act program in Nevada" is a prayer for mandamus relief, it is denied. Mandamus relief is an extraordinary remedy reserved for exceptional circumstances, and appellants have fallen far short of the showing that is necessary to obtain such relief. See United States v. Harper, 729

F.2d 1216, 1221-22 (9th Cir. 1984). Finally, since they have not substantially prevailed in this lawsuit, appellants are not entitled to attorney's fees under 5 U.S.C. § 552 (a) (4) (e).

AFFIRMED.

UNITED STATES DEPARTMENT OF THE

INTERIOR

OFFICE OF HEARINGS AND APPEALS

INTERIOR BOARD OF LAND APPEALS

4015 Wilson Boulevard

Arlington, Virginia 22203

August 20, 1980

IBLA 80-628 ELEANOR E. VOLKMAR	: :	N 23490 Desert Land Entry
IBLA 80-727, 784 APRIL ADAMICK	: :	N 24086, N 24012 Desert Land Entry
IBLA 80-766 JOSEPH J. ADAMICK	: :	N 23365, N 23973 Desert Land Entries
IBLA 80-767, 785 JANICE HAYS	: : : :	N 24087, 23316, 23888, 23900, 24088 Desert Land Entries
IBLA 80-768 KATHLEEN JO ADAMICK PRICE	: : :	N 23366 Desert Land Entry
IBLA 80-769 JANINE ADAMICK	: :	N 23364 Desert Land Entry
	:	Decisions set aside and cases remanded

ORDER

The above identified parties have each appealed decisions of the Nevada State Office, Bureau of Land Management (BLM), rejecting the captioned desert land entry applications. Each rejection was based on the fact that the applicant intended to cultivate an arid land species of plant known as the jojoba plant. BLM ruled that cultivation of jojoba would not meet the requirement of the regulations, 43 CFR Part 2520. The decisions were based on BLM Instruction Memorandum No. 80-383, dated March 14, 1980, and entitled "Public Inquiries on the Availability of Public Lands for the Cultivation of Arid Land Species," but no factual data or analysis on the cultivation of the jojoba plant was included in any of the case files transmitted to this Board.

Eleanor E. Volkmar and April Adamick (for IBLA 80-727) timely filed brief statements of reasons to refute the BLM conclusions. In each of the other appeals, the appellants filed timely requests for extensions of time to submit a statement of reasons because BLM had not yet supplied them with requested information concerning the basis of the rejections on which they could then base their statements of reasons. The Board granted a time extension to Kathleen Jo Adamick Price until October 14, 1980, and to Janice Hayes for IBLA 80-785 until September 22, 1980. The remaining requests for time extensions have not been acted on.

We understand that a jojoba fact report has been prepared by BLM for its field offices. All appellants should be given an opportunity to comment on this report, particularly in light of the

requests to BLM for additional information.

In a recent decision styled Joanne F. Wright, 49 IBLA 237 (1980), the Board set aside three identical rejections of desert land applications and remanded the case for consideration of the extensive data and analyses submitted by the appellants and for readjudication of the applications.

In order that all desert land entry applications involving the cultivation of the jojoba plant will be treated uniformly and the issues considered together, we will set aside the subject decisions and remand the cases to BLM for readjudication. We request BLM to serve a copy of the jojoba facts report on each appellant and provide a reasonable time period for comment. If after review of all submissions BLM again determines that cultivation of the jojoba plant will not support a desert land entry and that the

subject applications must be rejected for that reason, the record must reflect a reasoned basis for such determination. In readjudicating these applications, BLM should also examine each and determine whether the application is deficient for any other reason under the Act and regulations.

In view of this order, the time extensions granted to Kathleen Jo Adamick Price and Janice Hayes for submissions to this Board are mooted and, therefore, are vacated. The remaining requests for extensions are also mooted by this Order. Any additional submissions should be sent to BLM for consideration. In the event of any future adverse action by BLM, the appellants will have a right to appeal that action to this Board, unless it is a classification action pursuant to 43 CFR 2450.

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions below are set aside and the records remanded for further action consistent with this order.

Joan B. Thompson
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Douglas E. Henriques
Administrative Judge

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

WASHINGTON, D.C. 20240

March 25, 1981

Ms. Janice Hays
Attorney at Law
6343 Concho Lane
Las Vegas, Nevada 89102

Dear Ms. Hayes:

This is in further response to your Freedom of Information Act request remanded to the Bureau of Land Management (BLM) for further processing by the Department of the Interior's Freedom of Information Act Officer--Appeals.

The remand was made on a recommendation by the Department's Office of the Solicitor on the basis that our original decision did not appropriately consider the release of information contained in approximately 2880 applications for Desert Land Entry which had not been rejected at that time.

Since the time of your initial request approximately 1200 applications have been rejected and two have been approved. However, many more applications have been received and there are now nearly 2800 applications which have not been processed.

We grant access to these applications:

Each application includes the following:

*Two pages of instructions

*Five pages of completed responses

*Two pages of testimony signed by witnesses

*A sketched map responsive to item 11 on the entry form

*A serial page added to the application by BLM

*A voucher showing payment in funds by the applicant

In addition, many of the applications include a separate estimated budget plan of development in response to item 13(b) on the entry form. These plans vary in length and type of information provided.

Photo copy fees are five cents per page of copy reproduced on a standard office duplicating machine in sizes up to 8½" X 13". For copies of photographs, slides, maps, or other special documents or services, the charge is the direct cost of such services or materials to the Government.

Because your requests indicate that you are interested only in certain information which may be contained on the applications, and because copying costs could be prohibitive, I suggest that you work with the Nevada State Office to arrange to view these records or to narrow your request to include only the documents that will provide the information you need.

I suggest that you contact Roger Jarrell, Chief, Lands and Minerals Operations, (720) 784-5703, to arrange to view these documents.

Sincerely,

Eleanor R. Schwartz

Freedom of Information Officer

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
DEC 21 1984

JOSEPH ADAMICK, et al., Plaintiffs-Appellants, vs. WILLIAM CLARK, Secretary of the Department of the Interior, et al., Defendants-Appellees	NO. 84-1894 DC# CV-81-586, RDF Nevada (Las Vegas) ORDER

Before: SNEED and BOOCHEVER, Circuit Judges

In their opening brief, plaintiffs contend that the district court's disposition of the action was not final and that we have no jurisdiction over their appeal. We have considered the parties' memoranda submitted in accordance with our order of October 16, 1984, and reject this contention. Plaintiffs obviously take issue with the district court's disposition on a number of grounds, but no claims remain to be decided in the district court and the appeal is properly before us.

Appellees shall file their brief within 15 days of the date of entry of this order.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS, NEVADA

RECEIVED
AND FILED
AUG 5 8:03 AM '82
CAROL FITZGERALD
BY: Patricia Lamb
Deputy

JOSEPH ADAMICK, et al.	)	
	)	Civil-LV-
Plaintiffs	)	586-RDF
	)	MINUTES OF
vs.	)	THE COURT
	)	
JAMES G. WATT, etc., et al.,	)	Dated: August 5, 1982

PRESENT:
THE HONORABLE ROGER D. FOLEY, UNITED STATES DISTRICT JUDGE

DEPUTY CLERK: PATRICIA LAMB

REPORTER: NONE APPEARING

COUNSEL FOR PLAINTIFF(S): NONE APPEARING

COUNSEL FOR DEFENDANT(S): NONE APPEARING

MINUTE ORDER IN CHAMBERS

IT IS ORDERED that Plaintiffs' Motion for Amendment of Findings of Fact and Conclusions of Law, and for Additional Findings, filed December 4, 1981, is

denied.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Review in Part of Order of Magistrate, entered on March 24, 1982, filed April 2, 1982, is denied.

IT IS FURTHER ORDERED that Plaintiffs' Request that Court Grant Plaintiffs' Motion for Review in Part of the Order of the Magistrate as Motion hs not been Opposed, filed April 30, 1982, is denied.

IT IS FURTHER ORDERED that Plaintiff's Motion for Reconsideration of Magistrate's Order entered June 7, 1982, filed June 21, 1982, is denied.

CAROL C. FITZGERALD,
CLERK

CR 100

By Patricia Lamb 64
Deputy Clerk

ENTERED

MAR 25 1982

CLERK, U.S.
DISTRICT COURT
DISTRICT OF
NEVADA
By Patricia Lamb
Deputy

RECEIVED
AND FILED
MAR 24 8:52 AM '82

CAROL FITZGERALD,
CLERK
By Patricia Lamb
Deputy

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * * * * * * * * *

JOSEPH ADAMICK, ET AL.,	)	CIV LV
	)	81-586,
Plaintiffs,	)	RDF
	)	
	)	O R D E R
v.	)	
	)	
JAMES G. WATT, Secretary of the Interior, ET AL.,	)	
	)	
	)	
Defendants.	)	
	)	

The Motion of Plaintiffs to Compel Production of Documents and Motion for Order Directing that James Watt or Authorized Agent Respond for Defendants, Plaintiffs' Motion to Compel Defendants to Fully Answer Plaintiffs' First Set of

Interrogatories, and Plaintiffs' Motion to Compel Defendants to Fully Answer Plaintiffs' Second Set of Interrogatories came on regularly for hearing on March 16, 1982, before the Honorable Philip M. Pro, United States Magistrate.

The matters having been argued and submitted and good cause appearing therefor, IT IS ORDERED:

1. Defendants are ordered, at Plaintiffs' expense, to produce copies of the Serial Register Pages of all Desert Land Entries filed with the Bureau of Land Management in the State of Nevada subsequent to January 1, 1979. Defendants are also ordered to make available to Plaintiffs for copying, at Plaintiffs expense, at their offices at 300 Booth Street, in Reno, Nevada, all Desert Land Entry Application files filed subsequent to January 1, 1979. Said files will be available for Plaintiffs'

inspection and copying for a two week period commencing on March 30, 1982. Plaintiffs shall have the right to copy, at their expense, any document contained in any of said Desert Land Entry Application files. Except as provided herein, the remainder of Plaintiffs' Motion to Compel Production of Documents is denied.

2. Plaintiffs' Motion for an Order Directing that James Watt or Authorized Agent Respond for Defendants is denied.

3. Plaintiffs' Motion to Compel Defendants to Fully Answer Plaintiffs' First Set of Interrogatories is denied.

4. Plaintiffs' Motion to Compel Defendants to Fully Answer Plaintiffs' Second Set of Interrogatories is denied.

5. The deposition of Interior Secretary Watt or his designee may be taken on a date convenient to the parties.

IT IS FURTHER ORDERED that, pursuant to Local Rule 17(A)2, the deadline for the completion of all discovery shall be extended to June 28, 1982.

IT IS FURTHER ORDERED that the parties shall strictly comply with the provisions of Rule 17(A)4(b) of the Rules of Practice of the United States District Court for the District of Nevada, prior to bringing further discovery motions before the Court.

DATED: March 23, 1982

PHILIP M. PRO
United States
Magistrate

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LAS VEGAS, NEVADA

RECEIVED
AND FILED

Jan 16 4:34 PM '84

Carol C. Fitzgerald
Clerk

By: Jacqueline Rowlett
Deputy

JOSEPH ADAMICK, et al.,

Plaintiffs,

vs.

JAMES G. WATT, Secretary of the Interior, et al.,

Defendants.

Civil-LV 81-586, RDF

MINUTES OF THE COURT

Dated: January 16, 1984

ENTERED
Jan. 17, 1984
Clerk, U.S. District Court, District of Nevada
By: Jacqueline Rowlett

PRESENT:
THE HONORABLE ROGER D. FOLEY SENIOR
UNITED STATES DISTRICT JUDGE

DEPUTY CLERK: PRESTON BLUIETT, JR.

REPORTER: NONE APPEARING

COUNSEL FOR PLAINTIFF(S): NONE APPEARING

COUNSEL FOR DEFENDANT(S): NONE APPEARING

MINUTE ORDER IN CHAMBERS XXXX

IN COURT PROCEEDINGS:

IT IS ORDERED:

1. The Plaintiffs' Cross-Motion fo Partial Summary Judgment and for Specifi Performance of Contract (#163), filed Jun 7, 1983, is denied.

2. The Plaintiffs' Motion for Revie of Order Combining Summary Judgment Motion for Hearing and Plaintiffs' Motion to Hol Defendants' Motion for Summary Judgment i Abeyance (#169), filed November 28, 1983 are denied.

3. The Plaintiffs' Ex Parte Motion for Continuance of Hearin on Motions for Summary Judgment (#174) filed January 6, 1984, is denied.

CR 179 CLERK, U.S. DISTRICT COURT

EXHIBIT By_____
Deputy Clerk

LAMOND R. MILLS
United States Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSEPH ADAMICK, et al., Plaintiffs, vs. JAMES WATT, SECRETARY OF THE INTERIOR, et al., Defendants.	)	Civil No. CV-LV-81-586, RDF SUPPLEMENTAL AFFIDAVIT OF MR. WILLIAM K. STOWERS

COMES NOW the United State of America, by and through Lamond R. Mills, United States Attorney, . . . and submits this affidavit of Mr. William K. Stowers, Chief, Lands and Withdrawal Review Section, Branch of Lands and Mineral Operations for the Bureau of Land Management, as a supplement to defendants' opposition to plaintiffs' cross-motion for partial summary judgment and for specific performance of contract, filed June 3, 1983 which was filed with this Court of June 20, 1983.

LAMOND R. MILLS

1/ Emphasis supplied.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSEPH ADAMICK, et al.,	)	
	)	
Plaintiffs	)	Civil No.
	)	CV-LV-81-586,
v.	)	RDF
	)	
JAMES G. WATT, Secretary of the Interior, et al,	)	
	)	
Defendants	)	
	)	

Declaration

William K. Stowers declares as follows:

1. I am the Chief, Lands and Withdrawal Section for the Bureau of Land Management, Department of the Interior in Reno, Nevada.

2. This office has supplied plaintiffs' attorney 2305 first pages of Desert Land applications filed in Nevada.

3. . . . As of July 11, 1983, 2550 applications had been closed, 16 entries had been allowed with 1825 applications remaining to be processed. . .

William K. Stowers
July 19, 1983

FILED

DEC 20 1983

PHILLIP B. WINBERRY
Clerk U.S. Court
of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH ADAMICK, APRIL ADAMICK, KATHLEEN JO PRICE, JANICE HAYS and JANICE ADAMICK, Petitioners. vs. WILLIAM P. CLARK, Secretary of the Interior, Respondent.	No. 83-7599 ORDER

Before: CHOY, HUG and FERGUSON,
Circuit Judges

Respondent's motion to dismiss this case for lack of jurisdiction is granted and the case is DISMISSED.

FILED
JAN. 24, 1984
PHILLIP B. WINBERRY
CLERK, U.S. COURT
OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH ADAMICK, et al.,	)	No. 83-7599
Petitioners,	)	
vs.	)	
SECRETARY OF THE DEPARTMENT OF THE INTERIOR WILLIAM CLARK,	)	
Respondent.	)	ORDER

Before: CHOY, Circuit Judge

Petitioner's motion for an extension of time to file a petition for rehearing or a motion for reconsideration is denied. The mandate shall issue forthwith.

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

October 14, 1983

Ms. Janice M. Hayes
Attorney at Law
3391 S. El camino Road
Las Vegas, Nevada 89102

Dear Ms. Hayes:

. . .

. . . With regard to final classification orders and your Motion of September 3, the Secretary of the Interior is bound by the regulations at 43 CFR 2450.6(a), which provide: "a final order of the Secretary shall continue in full force and effect so long as the lands remain subject to classification . . . until an authorized officer revokes or modifies it . . ."

. . .

. . . Thus, the Nevada State Director's decision was not a reclassification as alleged. As to the petiioner/applicants' priority filing rights,you may be assured that they will not be extinguished so long as associated litigation is before the federal courts.

(Signature illegible)
Assistant Secretary of Land
and Water Resources

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 83-7599

JOSEPH ADAMICK, et al.

Petitioners,

V.

JAMES WATT, SECRETARY OF THE INTERIOR

Respondent

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PETITION FOR REVIEW FOR WANT OF JURISDICTION

. . .

1 Petitioners' applications are still pending before the Nevada BLM Director; the land classification determination that petitioners seek to have this court review was made in a separate proceeding (Case No. CV-LV-81-586). In addition, as noted in the petition for review, petitioners have filed an action in the United States District Court for the District of Nevada, alleging that certain information has been unlawfully witheld (sic) by the

Department of the Interior. Adamick v. Watt, No. Civ. LV-81-586. That action is still pending.

(Information in parentheses "Case No. CV-LV-81-586" added. Case No. 81-586, the instant action was the only action filed in teh district court.)

The Desert Land Act, 43 U.S.C. 321 et seq.,

§ 321. Entry right generally; extent of right to appropriate waters

It shall be lawful for any citizen of the United States, or any person of requisite age "who may be entitled to become a citizen, and who has filed his declaration to become such" and upon payment of 25 cents per acre--to file a declaration under oath with the officer designated by the Secretary of the Interior of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one-half section, by conducting water upon the same, within the period of three years thereafter: **Provided, however,** That the right to the use of water by the person so conducting the same, on or to any tract of desert

land of three hundred and twenty acres shall depend upon bona fide prior appropriation; and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said one-half section of land if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within the period of three years after filing said declaration, upon

making satisfactory proof to the officer designated by the Secretary of the Interior of the reclamation of said tract of land in the manner aforesaid, and upon the payment to such officer of the additional sum of $1 per acre for a tract of land not exceeding three hundred and twenty acres to any one person, a patent for the same shall be issued to him. Except as provided in section 3 of the Act of June 16, 1955, as amended, no person may make more than one entry under sections 321 to 323, 325, and 327 to 329 of this title. However, in that entry one or more tracts may be included, and the tracts may be included, and the tracts so entered need not be contiguous. The aggregate acreage of desert land which may be entered by any one person under this section shall not exceed three hundred and twenty acres, and all the tracts entered by one person shall be

sufficiently close to each other to be managed satisfactorily as an economic unit, as determined under rules and regulations issued by the Secretary of the Interior.

43 C.F.R. 2450.2

Preliminary determination.

Upon the filing of a petition-application, the authorized officer shall make a preliminary determination as to whether it is regular upon its face and, where there is no apparent defect, shall proceed to investigate and classify the land for which it has been filed. No further consideration will be given to the merits of an application or the qualifications of an applicant unless or until the land has been classified for the purpose for which the petition-application has been filed.

43 C.F.R. 2450.6

Effect of final order.

(a) A final order of the Secretary shall continue in full force and effect so long as the lands remain subject to classification under the authorities cited in Subpart 2400 until an authorized officer revokes or modifies it. Until it is so revoked or modified, all applications and petition-applications for the lands not consistent with the classification of lands will not be allowed. Any payments submitted therewith will be returned. If the order is revoked or modified, the land will be opened to entry on an equal opportunity basis after public notice in accordance with applicable regulations for the purpose for which it may be classified.

(b) Nothing in this section, however, shall prevent the Secretary of the Interior, personally and not through a delegate, from vacating or modifying a final order of the

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Secretary. In the event that the Secretary vacates or modifies a final order within sixty days of the date it became final, any preference right of a petitioner-applicant will be restored.

43 C.F.R. 2521.2 (d)

(d) Evidence of water rights required with application. No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right, or, in States where no permit or right to appropriate water is granted until the land embraced within the application is classified as suitable for desert-land entry or the entry is allowed, a showing that the applicant is otherwise qualified under State law to secure such permit or right.

Sept. 16, 1981

JANICE HAYES
3391 S. El Camino Road
Las Vegas, Nevada 89102
Telephone: (702) 871-5135

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOSEPH ADAMICK, JANINE ADAMICK, APRIL ADAMICK, JANICE HAYES, KATHLEEN JO PRICE, Plaintiffs, v. JAMES G. WATT, Secretary of the Department of the Interior, UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ROBERT F. BURFORD, Director of the Bureau of Land Management, EDWARD F. SPANG, Nevada State Director of the Bureau of Land Management, Defendants.	CIVIL ACTION NO. CV-LV-81-586, RDF COMPLAINT

COME NOW, JOSEPH ADAMICK, JANINE ADAMICK, APRIL C. ADAMICK, JANICE M. HAYES and KATHLEEN JO PRICE (hereinafter

"Plaintiffs"), by and through their attorney, Janice Hayes, and complain and allege of Defendants as follows:

FIRST CAUSE OF ACTION

I

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1331(a), 5 U.S.C. §§ 702-706, 28 U.S.C. § 28 U.S.C. § 1361 and 28 U.S.C. §§ 2201 and 2202, as hereinafter more fully appears. Venue is placed in the District Court of Nevada by virtue of 28 U.S.C. § 1391(e). The land in question is located in the County of Clark, State of Nevada.

28 U.S.C. § 1361 provides that the District Courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States to perform a duty owed to a plaintiff.

28 U.S.C. § 2201 provides that in a case of actual controversy within its

jurisdiction any Court of the United States may declare the right and other legal relations of any interested party seeking such declaration.

5 U.S.C. § 702 provides that a person suffering legal wrong because of agency action is entitled to judicial review thereof.

5 U.S.C. § 706 provides that the reviewing court shall compel agency action unlawfully withheld or unreasonably delayed.

II

PARTIES

Plaintiffs are citizens of the State of Nevada residing in Las Vegas, Nevada. Defendant JAMES G. WATT (hereinafter "Secretary") is Secretary of the Interior of the United States responsible under 43 U.S.C. § 2 for the performance of all executive duties pertaining to the public lands of the United States. The

Defendant BUREAU OF LAND MANAGEMENT, (hereinafter "BLM") is an agency of the defendant UNITED STATES DEPARTMENT OF THE INTERIOR ("Department"), and pursuant to 43 U.S.C. § 1, is headed by a Director. Defendant ROBERT F. BURFORD, (hereinafter "Director"), is the duly appointed and acting Director. Defendant EDWARD F. SPANG, ("State Director") is the duly appointed and acting Director of the Nevada State BLM Office.

III

STATEMENT OF THE CASE

This is not an appeal from an adverse final decision of an agency. Plaintiffs have obtained favorable decisions from the Interior Board of Land Appeals ("Board") and the Department's Freedom of Information Act appeals division. Plaintiffs' complaint concerns agency inaction.

The Secretary has failed to compel

the State Director to comply with the Board's remand order that BLM readjudicate Plaintiffs' Desert Land Entry ("DLE") applications, which order was entered more than a year ago, on August 20, 1980, and to furnish records and information in compliance with a Freedom of Information appeal remand order of March 12, 1981.

Plaintiffs seek an order in the nature of a writ of mandamus and a preliminary injunction.

IV

On January 1, 1979, then Secretary of the Interior Cecil Andrus lifted a fifteen-year moratorium which had been imposed on applications for entry in Nevada under the Desert Land Act, as amended, 43 U.S.C. § 321, et seq. ("Act"). The Act provides for the sale of up to 320 acres of land at $1.25 per

acre to applicants who are willing and able to irrigate and cultivate a tract designated as desert land.

The Nevada BLM selected 8 million acres of the approximately 49 million acres of land held by the federal government in Nevada and distributed maps showing that these lands were suitable for entry and open to DLE applications. Plaintiffs filed applications during the "simultaneous filing period" which ended April 2, 1979. Their applications were designated by BLM as N 24012, N 24086 (April Adamick), N 23365, N23973 (Joseph Adamick), N 23364 (Janine Adamick), N 23316, 23888, 23900, 24087, 24088 (Janice Hayes) and N23366 (Kathleen Price).

V

Plaintiffs designated alfalfa, sudan and wheat grass as intended crops and subsequently amended their applications to show the jojoba bean as the proposed

crop.

VI

The Nevada Director sent notices to Plaintiffs that their applications would be rejected unless certain deficiencies, primarily related to irrigation maps and plans, and incomplete answers were corrected. Plaintiffs supplemented and resubmitted their applications, which applications were then accepted by the Director.

VII

Various newspaper articles quoted Nevada BLM spokespersons as stating that approximately 200 DLE applications had been granted. BLM failed and refused to provide information regarding the names and addresses of said applicants, the location of their tracts of land, the proposed crop, irrigation system and source of water and whether water permits had been obtained and if so, the date of

acquisition.

VIII

By decisions dated May 23, 1980, May 26, 1980 and June 9, 1980, the State Director rejected plaintiffs' applications based on his determinations that (1) the jojoba bean did not qualify under the Act as a proposed crop; (2) the economic feasibility of growing jojoba cannot be demonstrated and (3) that the capability of a given tract to support the cultivation of jojoba could not be determined.

These were the only reasons given for rejection. No other deficiencies or omissions in the applications were alleged.

IX

Plaintiffs filed appeals to the Board and moved for extensions of time to submit statements of reasons, citing

BLM's refusal to provide needed information.

By Order dated August 20, 1980, the Board of Land Appeals set aside BLM's determinations and remanded the cases to the Nevada BLM with instructions that BLM readjudicate Plaintiffs' applications, give a reasoned basis for its decision and provide the information that had been requested by plaintiffs. A copy of the Board's Order is attached hereto and incorporated herein by reference as Exhibit 1.

X

The State Director failed and refused to comply with the Board's order, although requested many times to do so by plaintiffs.

Upon inquiry, the Board advised plaintiffs that it had not retained jurisdiction on remand and could not compel discovery.

Plaintiffs therefore filed an appeal to the Secretary under the Freedom of Information Act. The SECRETARY adopted the findings of the Acting Associate Solicitor and by Order dated March 12, 1981, remanded the appeal to the Nevada BLM with instructions that it furnish the above-mention information as to all applications which had not been rejected. Said Order is attached hereto and incorporated herein by reference as Exhibit 2. BLM did not file any objections to the Order or move to vacate or modify the order.

XI

The Nevada BLM, without readjudicating Plaintiffs' DLE applications, notified Plaintiffs' by decisions dated March 26, 1981, that their applications would be rejected unless certain alleged "deficiencies," relating to irrigation maps and proof of

acquisition of a water supply, were corrected. Said notices specifically stated that the decisions were not appealable orders. Plaintiffs resubmitted their applications, without waiving their objections that their prior applications were satisfactory and of equal or better quality and completeness as those submitted by other applicants which had been accepted and processed by BLM and forwarded to the Las Vegas District Office for further studies and surveys.

XII

Plaintiffs filed an Objection in the Nevada State Office and subsequently, on May 30, 1981, they also filed a Motion for Summary Judgment or in the alternative, Petition for Writ of Mandamus in the Board of Land Appeals. A copy of said motion is attached hereto and incorporated herein as Exhibit 3.

XIII

By letter dated July 8, 1981, Administrative Judge Gail M. Frazier advised plaintiffs that the Board did not retain continuing jurisdiction over their cases and that "unless and until BLM issues an adverse decision with respect to them (plaintiffs' applications) and an appeal is properly filed, this Board will not act in the matter."

The SECRETARY has not responded to Plaintiffs' requests for assistance.

XIV

Plaintiffs are, therefore, in a more disadvantageous position than if the Board's Order had been adverse. The Nevada BLM refuses to readjudicate their applications and enter a decision and the Board will not act until BLM enters an adverse decision, nor will the Board or Secretary direct BLM to comply with the remand orders and grant discovery.

Plaintiffs' only recourse is to seek the aid of this Honorable Court. Plaintiffs have been and will continue to be harmed by the DEPARTMENT's inaction. Water supplies in Nevada are limited and there is not enough to support all the DLE applications for entry that have been filed. Plaintiffs will be irreparably harmed if other applications are granted prior to theirs.

XV

The actions and decisions of the State Director are arbitrary, capricious and an abuse of discretion, and are otherwise not in accordance with law, and are supported by no evidence and are discriminatory as to Plaintiffs. The Nevada BLM has demanded that plaintiffs furnish evidence of acquisition of water rights while not requiring said proof of other applicants. BLM has transmitted other applications to the Las Vegas

District Office for further surveys and reports, notwithstanding that said other applicants have submitted no proof of water rights.

XVI

Defendants' actions are subject to judicial review within the meaning of 5 U.S.C. § 704. This court has the power to compel agency action unlawfully withheld or unreasonably delayed pursuant to 5 U.S.C. § 706(1).

XVII

Defendants owe plaintiffs the plain duty under the Desert Land Act to process their applications according to the procedures set forth and contemplated by such Act and according to the same standards applied to other applicants.

XVIII

Plaintiffs are entitled to an order to compel defendant officials to

readjudicate their DLE applications, enter an order which can be appealed if adverse, or transmit their applications to the Las Vegas District Office for further processing or grant their applications for entry.

SECOND CAUSE OF ACTION

Plaintiffs incorporate herein by reference the allegations contained in Paragraphs 1 through XVIII and makes them a part hereof as if fully set forth herein.

XX

The State Director has failed and refused to furnish information pertaining to other DLE applicants in a timely fashion as he was directed to do by the Board and the Department. Plaintiffs offered to compromise and to accept photocopies of the first pages of all DLE applications with the right to obtain copies of any other pages, irrigation

maps and evidence of water rights upon request. The State Director has unnecessarily delayed in providing said copies of the first pages.

XXI

The State Director has failed and refused to furnish the names and addresses of other "jojoba appellants," and to disclose the disposition of other appeals to the Board of Land Appeals. The Board impliedly suggested that all appeals based on rejections on the basis that jojoba was the proposed crop should be heard and determined together.

XXII

The State Director maintains that only two applications have been granted for entry under the Act in Nevada. Plaintiffs allege that either other applicants have been granted or that the State Director has made agreements with

other applicants and has preselected which applications will be granted. Plaintiff seek full disclosure pertaining to granting of entries.

XXIII

Plaintiffs requested copies of the evidence submitted by other applicants in support of their affirmative answers to Question 12(b) on their applications that they had acquired or would obtain a right to the permanent use of sufficient water to irrigate and reclaim all of the land applied for. Plaintiff JANICE HAYES' letters dated July 25, 1981 and July 27, 1981 are attached hereto and incorporated herein by reference as Exhibits 4 and 5.

The Nevada BLM advised plaintiffs that it did not have such proof or evidence and that the applications of other applicants which did not contain such proof had been forwarded to the Las Vegas District office and processed in

error and that said applications would be recalled. A Memorandum from the Nevada BLM dated August 24, 1981 listing some of said applications which did not contain proof of water rights is attached hereto and incorporated herein by reference as Exhibit 6.

Plaintiffs are informed and believe and thereon allege that said applications have not been returned to the Nevada State Office in Reno, Nevada.

XXIV

Public Law No. 89-292 authorized the Secretary of the Interior to construct, operate and maintain the Southern Nevada Water Project which provides water from the Colorado River. The Colorado River Commission, as the administrative agency, contracts through Boulder City, Henderson, City of North Las Vegas, Nellis Air Force Base and the Las Vegas

Valley Water District to distribute water to the general public by sale. The land for which Plaintiffs have applied is within the area served by the Las Vegas Valley District.

Defendants have failed and refused to furnish to plaintiffs information regarding individuals, associations or corporations that have contracted with any of the above-listed entities or with Defendants to purchase water from the Southern Nevada Water Project.

XXV

Plaintiffs are entitled to an order to compel defendants to comply with their own discovery orders and to furnish the information requested as set forth hereinabove in Paragraphs XIX through XXIV.

THIRD CAUSE OF ACTION

XXVI

Plaintiffs incorporate herein by

reference the allegations contained in Paragraphs 1 through XXV and makes them a part hereof as if fully set forth herein.

XXVII

Before a DLE application is granted, BLM must transmit applications to District offices for environmental, cultural, historical and land use studies and surveys. The State Director has failed and refused to transmit plaintiffs' applications and has transmitted applications filed several months later than plaintiffs', thus giving other applicants priority in time over plaintiffs. As there are insufficient water supplies in Nevada to permit all applications for entry, plaintiffs will be irreparably harmed if other applications are granted prior to theirs.

XXVIII

Unless enjoined and restrained by

orders of this Court, defendants will grant rights of entry to other applicants which will foreclose Plaintiffs' rights to obtain entry. Granting of other applications will result in irreparable harm, injury and damage to plaintiffs and plaintiffs will be unlawfully and wrongfully deprived of property rights, the value of which can not be determined at this time.

XXIX

Plaintiffs have no plain, speedy or adequate remedy at law for the continuing and future injury being perpetrated by Defendants' conduct and inaction.

FOURTH CAUSE OF ACTION

XXX

Plaintiffs JOSEPH ADAMICK, APRIL ADMAICK and JANICE HAYES submitted more than one DLE application. An individual may

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For a decree ordering defendant Edward Spang to readjudicate their DLE applications on the issues presented in the decisions and to transmit said applications to the Las Vegas District BLM Office for further processing, or alternatively, for a decree ordering defendants to grant plaintiffs' DLE applications.

2. For an order directing defendants to provide all the information requested by plaintiffs in their Second Cause of Action.

3. For a preliminary injunction enjoining and restraining defendants from taking any action on any applications other than plaintiffs' which will adversely affect plaintiffs' rights, including but not limited to, granting a right of entry to any other applicant, transmitting any other applications to district offices, processing or conducting studies pertaining to any

other applications, reimposing a moratorium on DLE entries in Nevada or destroying or allowing amendments to any applications heretofore filed by other DLE applicants, as set forth in Plaintiffs' Motion for a Preliminary injunction, filed herewitn with this Complaint.

4. For costs and disbursements necessarily incurred herein and for reasonable attorney's fees;

5. For a declaratory judgment that assignation of plaintiffs' applications will relate back to the date of filing of said applications; and

6. For such other and further relief as the Court shall deem meet and proper in the premises.

DATED this 15th day of September, 1981

JANICE M. HAYES
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Las Vegas, Nevada 89102
Attorney for Plaintiffs

(3)

No. 85-1318

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1985

JOSEPH ADAMICK, ET AL., PETITIONERS

v.

DONALD P. HODEL, SECRETARY,
DEPARTMENT OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a summary judgment order that adjudicated all the claims in petitioners' complaint was a final order within the meaning of 28 U.S.C. 1291.

2. Whether the district court abused its discretion in denying a request to amend the complaint that was made after final judgment was entered against petitioners.

3. Whether the district court correctly granted summary judgment in an action under the Freedom of Information Act, 5 U.S.C. 552, when the uncontroverted evidence showed that all the requested information had been made available.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is unreported. The order of the district court is unreported and is reproduced as an appendix to this brief (App., *infra*, 1a).

JURISDICTION

The judgment of the court of appeals was entered on October 2, 1985. Justice Rehnquist extended the time for filing a petition for a writ of certiorari to and including January 31, 1986, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In January 1979 the Secretary of the Interior lifted a 15-year moratorium that had been imposed on applications

for entry on public land in Nevada under the Desert Land Act, 43 U.S.C. 321 *et seq.* The Act generally provides that qualified persons may seek to enter and reclaim by irrigation desert land in several of the western states.[1] A person wishing to make an entry must file a declaration stating he intends to reclaim a particular tract of land, show that he has water rights that are based on a bona fide prior appropriation, and file irrigation plans with his declaration. 43 U.S.C. 321, 327.[2] Before entry is allowed, however, the land must be classified as suitable for entry and disposal. 43 U.S.C. 315f. By regulation, the Secretary of the Interior has established a system whereby applications for entry under the public land laws must include petitions for classification if the land has not previously been classified. 43 C.F.R. 2450.1.

Petitioners filed applications stating that they intended to reclaim the land designated in their applications for the purpose of growing the jojoba bean (E.R. 3-4).[3] In June 1980 the Bureau of Land Management (BLM) rejected these applications on the grounds that the jojoba bean was an arid land species that could be grown without irrigation and therefore could not qualify as a proposed crop under the Act. The BLM also concluded that there was no evidence that the jojoba bean could be cultivated on a commercial basis. Petitioners appealed to the Interior Board of Land Appeals, which remanded the applications to BLM for further consideration because the record did not contain

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[1]The Act defines "desert land" as "[a]ll lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop." 43 U.S.C. 322.

[2]If the person making the entry subsequently satisfies the Department of the Interior that he has reclaimed the land and has expended at least three dollars an acre in development costs, that person may receive a patent for the land. 43 U.S.C. 321, 328, 329.

[3]"E.R." refers to the Excerpt of Record filed in the court of appeals.

sufficient information to justify the rejection of the applications. Pet. App. 10a-13a.

Petitioners also sought disclosure under the Freedom of Information Act, 5 U.S.C. 552, of the names and addresses of successful applicants for entry (E.R. 120). The BLM responded that no applications for entry had been approved (E.R. 113, 116, 117). Reviewing officials of the Interior Department, while noting that there was "some confusion as to exactly what" information petitioners sought, interpreted their request as seeking "the names and addresses of those [] applicants whose applications had not been rejected by BLM" (S.E.R. 2-3).[4] The BLM then granted access to all applications pending as of March 25, 1981, which were said to number 2,880. The BLM suggested to petitioners that they make arrangements to view the applications at the Nevada State office, rather than incur potentially substantial copying fees (Pet. App. 15a-17a). Petitioners thereafter requested BLM to copy the first page of each application that had not been rejected (E.R. 130). The BLM thereafter delivered approximately 2,300 pages, which included the first pages from each of the applications that had not been rejected (Pet. App. 28a).

2. Petitioners filed this action in September 1981 in the United States District Court for the District of Nevada. Petitioners alleged that the BLM had failed to process their applications as ordered by the Interior Board of Land Appeals (Pet. App. 45a-56a) and that the BLM had not complied with the disclosure order regarding petitioners' Freedom of Information Act requests (*id.* at 56a-60a). Petitioners sought an order requiring prompt disposition of their applications and disclosure of all requested information, as well as costs and fees and other appropriate relief

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[4] "S.E.R." refers to the supplemental excerpt of record filed in the court of appeals.

(*id.* at 63a-64a). During discovery, the BLM agreed to collect all active applications from the various district offices in Nevada and make them available to petitioners at the Reno, Nevada, office for inspection and copying for a two week period. The magistrate entered this agreement as an order of the court (Pet. App. 21a-24a) and the BLM fully complied with the order (S.E.R. 6, 17).

In December 1982, while petitioner's district court action was pending, the Las Vegas District Office of the BLM issued a proposed classification decision for the land that petitioners had applied to enter (E.R. 82). The BLM concluded that the land was not suitable for entry, principally because there were no new water rights available to support entry (E.R. 83). The BLM accordingly rejected petitioners' applications (E.R. 84). Petitioners' challenges to the proposed land classification decision were rejected by the BLM, and that decision became final when the Secretary of the Interior declined to review the order denying the applications. In August 1983, petitioners filed a petition for review of the land classification decision in the Ninth Circuit, which dismissed the petition for review for lack of subject matter jurisdiction (Pet. App. 29a).

The defendants filed a motion for summary judgment in the district court after the BLM issued the land classification decision, arguing that that decision satisfied the petitioners' claim for a resolution of their applications and that the BLM had supplied all the information requested under the Freedom of Information Act. Petitioners opposed this motion and filed a cross-motion for partial summary judgment. On January 16, 1984, the district court granted the government's summary judgment motion, denied petitioners' cross-motion, and dismissed the complaint (App., *infra*, 1a; Pet. App. 25a-26a).

Petitioners then filed a motion to alter or amend the judgment pursuant to Rule 59(e), Fed. R. Civ. P. In their reply memorandum in support of the motion, petitioners asked for the first time for permission to amend their complaint to state causes of action that arose after filing the complaint. Specifically, petitioners sought to amend their complaint to challenge the validity of the land classification decision that had caused the rejection of their applications. The district court denied the motion to alter or amend the judgment and their request to file an amended complaint. Pet. App. 3a.

3. Petitioners appealed, but then argued in the Ninth Circuit that their appeal was improper. Petitioners contended that the district court had not issued a final order since not all of their claims had been adjudicated. The court of appeals rejected petitioners' contention that the district court's order was not final (Pet. App. 18a).

A separate panel of the court then affirmed the district court's grant of summary judgment in favor of the defendants in an unpublished opinion (Pet. App. 1a-8a). The court noted that the pleadings had not been amended to include the validity of the land classification decision and held that the district court did not abuse its discretion by denying the request for leave to amend the complaint (Pet. App. 4a). Since petitioners had not shown any extraordinary circumstances justifying review of claims not properly raised below, the court declined to consider petitioners' attack on the land classification decision (*ibid.*).

On the Freedom of Information Act claim, the court concluded that summary judgment was appropriate since petitioners had not produced any evidence, by affidavit or otherwise, that contradicted the declarations of the BLM officials that all the requested information had been supplied (Pet. App. 5a). Accordingly, the court held petitioners

were not entitled to attorney's fees under the Freedom of Information Act since they had not substantially prevailed (Pet. App. 8a).[5]

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Review by this Court is therefore not warranted.

1. Contrary to petitioners' contention (Pet. 18-22), the court of appeals correctly held that the district court had entered a final judgment disposing of all of the claims in petitioner's complaint. The district court's judgment (App., *infra*, 1a) is not expressly limited to fewer than all the claims in the complaint and the dismissal was obviously intended to dispose of all of petitioners' claims. Petitioners' attack on the validity of the decision that classified the land as unsuitable and denied petitioners' applications could not have been a part of their complaint since that decision came more than a year after the filing of the complaint, which was never amended. Petitioners contend (Pet. 20), citing the prayer for relief in the complaint (Pet. App. 63a-64a), that they sought to enjoin the BLM from reclassifying the land which they sought to enter. However, the prayer for relief simply does not seek any such relief. In any event, whether the court of appeals correctly concluded that the district court disposed of all the claims in petitioners' complaint is a

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[5]The court also denied petitioners' request for mandamus to order the Secretary of the Interior to " 'investigate alleged irregularities in the administration of the Desert Land Act program in Nevada' " since petitioners had made no showing warranting such extraordinary relief (Pet. App. 7a).

factbound question that does not warrant this Court's attention.[6]

2. There is no merit to petitioners' contention (Pet. 22-23) that the court of appeals erred in concluding that the district court did not abuse its discretion when it rejected petitioners' attempt to vacate the final judgment on the ground that they wished to amend the complaint to include a challenge to the land classification decision. Petitioners cite no authority showing the court of appeals was required to reverse the district court's refusal to grant a postjudgment request to raise new claims that had accrued many months before, a contention that is contrary to the familiar principle that district courts have considerable discretion over such matters. See *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 401 U.S. 321, 330 (1971); *Caddy-Imler Creations, Inc.* v. *Caddy*, 299 F.2d 79, 84 (9th Cir. 1962).

3. Nor is there any merit to petitioners' contention (Pet. 25-27) that the court of appeals erroneously affirmed the grant of summary judgment in favor of the government on petitioners' Freedom of Information Act claim. The uncontroverted evidence in the record established that the Department of the Interior had granted access to all desert land entry applications that had not been rejected and closed, and that the BLM, pursuant to petitioners' request, had supplied copies of the first pages of approximately

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[6]The issuance of the land classification decision mooted most of the so-called unadjudicated claims identified by petitioners (Pet. 18-20) in support of their claim that the district court did not issue a final judgment. One exception to this is petitioners' contention (Pet. 18-19) that the BLM erred by deciding that the jojoba bean was not a suitable crop before making a land classification decision. Although 43 C.F.R. 2450.1 calls for determination of the land classification issue first, petitioners have not shown that they were prejudiced in any way by the BLM's determination of the question whether the jojoba bean was a suitable crop prior to deciding the land classification question.

2,300 applications (see Pet. App. 28a). Furthermore, in the course of discovery after the complaint was filed the BLM opened all of its files to petitioners for inspection and copying (Pet. App. 22a; S.E.R. 6, 17). Plainly, the BLM fulfilled any reasonable construction of its obligations under the Freedom of Information Act. See *Lybarger* v. *Cardwell*, 577 F.2d 764, 767 (1st Cir. 1978); *Nolen* v. *Rumsfeld*, 535 F.2d 890, 892 (5th Cir. 1976), cert. denied, 429 U.S. 1104 (1977). Petitioners failed to produce any evidence or affidavits to support their contrary claim, which was their obligation if they expected to defeat a motion for summary judgment. Rule 56(e), Fed. R. Civ. P.[7]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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Solicitor General

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Assistant Attorney General

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Attorneys

APRIL 1986

[7]Petitioners' remaining claims, which were not addressed by the court of appeals, are manifestly frivolous and do not warrant review by this Court.

DOJ-1986-04

APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Joseph Adamick, et al.	)	
	)	
Plaintiffs	)	Civil No. CV-LV-81-586, RDF
	)	
vs.	)	
	)	SUMMARY JUDGMENT
James G. Watt, Secretary	)	
of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

This action came on for hearing before the Court, Honorable Roger D. Foley, United States District Judge presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that Defendant's Motion for Summary Judgment is granted and Plaintiff is ordered to pay Defendant's costs herein.

/s/ ROGER D. FOLEY
ROGER D. FOLEY
United States District Judge

Dated: January 16, 1984